IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3330 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GRUH FINANCE LTD

Versus

CENTRAL BOARD OF DIRECT TAXES

Appearance:

MR JP SHAH for Petitioner

MR MIHIR JOSHI for MANISH R BHATT for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. The petitioner, a public Ltd. Company formed and registered in India with the main object of carrying on business of providing long term finance for construction or purchase of houses in India for residential purposes, has challenged by way of this petition the decision of the Central Board of Direct Taxes (hereinafter to be referred to as "the Board") of not granting approval to the petitioner under Section 36(1)(viii) of the Income-tax Act, 1961 (hereinafter to be referred to as "the Act").

#. The petitioner applied to the Board for approval for assessment years 1997-98 to 2002-2003. In the application made for approval, the petitioner submitted various details and pointed out that it had complied with the requirements laid down in the provision namely Section 36(1)(viii) of the Act. On receipt of the application, it appears that some correspondence ensued between the petitioner and the Board. However, for the purpose of this petition, it is not necessary to refer to the said correspondence in detail, though the same is available on record. The Board did not grant approval to the petitioner for assessment year 1997-98, however, by its communication dated 27.10.98, the Board informed the petitioner that the approval was granted for assessment years 1998-1999 and 1999-2000 (Exh.C). The petitioner therefore once again approached the Board and sought to persuade the Board to grant approval for assessment year 1997-98 also. However, as it did not meet with any favourable response, this petition was filed.

#. We have heard Mr. J.P. Shah and Mr. Mihir Joshi, learned counsel appearing on behalf of the petitioner and the respondent respectively. In view of the undisputed facts which have come on record, it is not necessary for us to elaborately deal with the submissions made on behalf of both the sides.

#. During the course of hearing, our attention was drawn to the fact that as on 31st March, 1997, the petitioner had employed long term capital to the tune of Rs. 18,440.75 lacs while long term housing finance was to the tune of Rs. 14,694.28 lacs. Therefore, the ratio of long term housing finance to the long term capital employed was to the tune of 79.68%. It is an undisputed fact that these figures have been arrived at as required by the guidelines accepted by the Board. It is an admitted position between the parties that guidelines of

the National Housing Bank require a minimum level of 75% ratio between the two figures, namely of long term housing finance to the long term capital employed. One more undisputed fact is that the petitioner has complied with the guidelines issued by the National Housing Bank which enables it to obtain finance or refinance from the National Housing Bank.

#. In light of this fact situation, this petition is required to be allowed on this short ground alone. It is not necessary for us to enter into the aspect of whether the petitioner had been heard or not by the Board before arriving at the decision not to grant approval or not.

#. The petition is therefore allowed and the respondent is directed to grant approval to the petitioner under Section 36(1)(viii) of the Act for assessment year 1997-98 within a period of 4 weeks from the date of receipt of certified copy of this order or the writ of the Court, whichever is earlier. Rule is made absolute with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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